

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Section 63.71 Application of	)	WC Docket No. 11-183
Open Range Communications Inc.	)	
For Authority Pursuant to Section 63.71 of the	)	
Commission's Rules to Discontinue the	)	
Provision of Interconnected Voice over Internet	)	
Protocol Service	)	

To: Marlene Dortch, Secretary  
Attention: Wireline Competition Bureau

**REQUEST FOR IMMEDIATE AUTHORITY TO DISCONTINUE SERVICE**

Open Range Communications Inc. ("Open Range"), by its attorneys, hereby requests immediate authority to discontinue its provision of interconnected Voice over Internet Protocol ("VoIP") service. Open Range's efforts to complete a sale of its business as a going concern while in Chapter 11 Bankruptcy were unsuccessful, and no willing buyer has emerged.

**I. Financial Hardship Makes Continuance of Service Impossible.**

Open Range is a provider of wireless broadband and VoIP services in rural communities in seventeen states. Open Range recently filed a voluntary bankruptcy petition and filed applications with the FCC to transfer control of its Title III authorizations to Open Range as debtor-in-possession. Open Range also notified its VoIP customers on October 6, 2011 that it would be discontinuing its VoIP services as early as November 6, 2011. That same day it filed the above-referenced application to discontinue its VoIP service. In parallel with these filings Open Range has conducted both informal and formal bidding processes in an effort to find a

buyer for the company that would be able to continue providing service to its customers. Unfortunately, those efforts have not been successful.

At this time, Open Range cannot afford to keep its voice and data services active even for one more day because it lacks funding to support the more than \$50,000 per day in net operating cash burn. These costs are incurred for the lease of network towers, telecommunications circuits, billing, customer care, back office, maintenance and other supporting services as well as rents and salary payments to Open Range employees who operate and maintain the network serving 157 markets. In early October, when Open Range filed for Chapter 11 Bankruptcy protection, it advised its creditors, the Court and other parties in interest that it had secured very limited debtor-in-possession funding in an amount that would allow for a sale process to be conducted, so long as a buyer could be identified who could fund ongoing operating costs from and after early November. If no such buyer were identified, the debtor would promptly commence an orderly wind down of the business. The budgets associated with the Court-approved financing contemplate a shutdown of network services from and after November 7. The early November date was intended to coincide with the date Open Range provided in its notice to customers and believed that it could terminate voice and data services, consistent with Commission notice requirements. Open Range advised the Court, creditors and lenders at the time of filing that Open Range had, on October 6, given to each of its approximately 8,000 customers the notice required by Commission regulations to permit Open Range to discontinue interconnected VoIP service on or after November 6th (thirty days from delivery of such notice).

Open Range's efforts to find a buyer initially bore fruit and Open Range had, until November 15, expected to sell its operations as a going concern to a buyer who had executed an asset purchase agreement. Open Range had been actively considering how to reach out to its

voice customers to let them know that service would be continuing under new ownership. Open Range and its creditors were shocked when the buyer advised on November 15, without excuse or justification, that it would not go forward with the proposed sale. Open Range advised the Bankruptcy Court on November 15 that it would immediately take steps to shut down its network and wind down the business.

On November 2, 2011, Open Range received notice from the Commission, stating that Open Range was permitted to discontinue voice services, but only after December 2, 2011. Open Range does not have the funds available to continue operating its network until December 2. Open Range urges the Commission to grant a waiver or such other relief as may be necessary to permit Open Range to discontinue provision of its interconnected VoIP service immediately. The hardship to the company and its creditors, along with the associated risk of administrative insolvency and breach of the only financing arrangements it has or will ever secure, which are provided under detailed budgets, outweigh any proposed inconvenience or harm to its approximate 7,000 remaining voice customers of continuing services for another sixteen days. Open Range submits that, to its knowledge, all or substantially all of its customers have alternatives for voice service, and that most have several.

## **II. Comments Submitted in the Proceeding Do Not State a Compelling Case for Mandating Open Range to Continue Service.**

Open Range has reviewed all of the comments in response to its notice from customers received to date. From those comments, Open Range can identify no such customers for whom alternative voice services clearly do not exist. Many indicate that switching providers is inconvenient or more expensive, or that they prefer having Open Range as an alternative. Several comments make clear that customers are concerned about losing high speed internet but not voice services. At least two express concern that they might not be refunded amounts they

prepaid for services. No commenter says that there are no alternative voice carriers in their market. Each of the comments is discussed below.

**A. West (Two Comments) (received 10/19/11 and 10/20/11)**

Comments indicate that, because of length of driveway, service is not available from Charter. Comments appear to relate to broadband service and do not indicate that alternative voice service is unavailable.

**B. Babcock Comments (received 11/2/11)**

Comments indicate that alternative service is available at a higher cost.

**C. Camden Comments (received 10/24/11)**

Comments indicate that customer has already changed service to CenturyLink and seeks refund.

**D. Fonseca Comments (received 10/17/11)**

Comments indicate that AT&T is apparently an alternative for voice service.

**E. Harmsen Comments (received 10/20/11)**

Comments appear to indicate that alternative service is available, but that customer would incur expense for wiring.

**F. Hyndman Comments (received 10/17/11)**

Comments indicate that there are alternatives available at a higher cost.

**G. Jones Comments (received 10/27/11)**

Comments indicate that commenter cannot get alternative service because of problems with credit but do not indicate that alternative voice services are unavailable.

**H. Kelly Comments (received 10/19/11)**

Comments reference telecommuting and apparently relate to internet service. Comments do not indicate alternative voice services are not available.

**I. Key Comments (received 10/25/11)**

Comments indicate that customer likes the service, but do not indicate that no alternatives are available.

**J. Lore Comments (received 10/24/11)**

Comments indicate that alternative service is available from Frontier at a higher charge, thus clarifying that alternatives are available.

**K. Maccaux Comments (received 10/17/11)**

Comments indicate that customer cannot “afford to get another provider,” but do not indicate that service is unavailable.

**L. Mines Comments (received 10/28/11)**

Comments indicate that an alternative provider is available at a “higher price tag.”

**M. Polin Comments (received 10/17/11)**

Comments indicate that customer cannot afford a large down payment and high monthly payment for an alternative provider, but do not indicate that alternatives are unavailable.

**N. White Comments (received 10/17/11)**

Comments indicate that customer cannot find a reasonable [apparently affordable] substitute, but do not indicate that voice service is unavailable.

**O. Zimmerman Comments (received 10/19/11)**

Comments relate to high speed internet service and do not indicate that alternative voice service is unavailable.

**P. Cooks Comments (received 11/9/11)**

Comments indicate that alternative services are unaffordable, but do not indicate that they are unavailable.

**Q. Justus Comments (received 10/18/11)**

Comments indicate that phone does not work and customer seeks return of payments. Comments do not indicate that alternative services are unavailable.

**R. Williams Comments (received 10/18/11)**

Comments do not indicate whether they refer to voice or internet service and do not indicate that voice service is unavailable.

**S. Bolton Comments (received 10/17/11)**

Comments do not indicate that there are no alternative services available.

**III. Open Range Proposes a Customer Accommodation Plan.**

Subject to FCC approval, and as an accommodation to customers who have accurately advised (or within one week from today advise the FCC and/or Open Range): a) that they do not have an immediately available alternative voice services provider (“Noticing No Alternatives Customers”), or b) that they are required to pay more on a monthly basis than they do for the service they enjoy now from Open Range (and would for the next two weeks if Open Range were required to keep up voice service until the date set forth in the FCC’s correspondence) (“Noticing Higher Cost Customers”), Open Range is prepared to offer the following financial accommodations:

In respect of Noticing No Alternatives Customers -- a payment of \$200.

In respect of Noticing Higher Cost Customers -- a payment of \$50.

Each of these payments would be conditioned on the requesting customer having paid in full all current and past due charges owed to Open Range. Open Range also represents to the Commission in connection with this request for relief that it has established procedures under which customers who have prepaid for services not received would be ratably reimbursed for unused service.

#### **IV. Conclusion**

For the reasons set forth above, Open Range respectfully requests immediate authority to discontinue VoIP service.

Respectfully submitted,

**Open Range Communications Inc.**

By: /s Joe D. Edge

Joe D. Edge  
Drinker Biddle & Reath LLP  
1500 K Street, N.W., Suite 1100  
Washington, D.C. 20005  
202-842-8809  
joe.edge@dbr.com

Its Attorneys

November 17, 2011

**CERTIFICATE OF SERVICE**

I, Joe D. Edge, hereby certify that on this 17<sup>th</sup> day of November, 2011, a true copy of this Application of Open Range Communications Inc. was sent via first class, postage paid United States Mail to the following:

Clarence Babcock  
743 Ponderosa Drive  
Windsor, CO 80550-5461

Benjamin and Candace West  
3494 Garrison Street  
Gadsen, AL 35903

Marla J. Camden  
5205 West 27<sup>th</sup> Street  
Greeley, CO 80634

Dan Fonseca  
P.O. Box 860782  
Tuscaloosa, AL 35486

Kevin and Cheryl Harmsen  
W10405 Church Road  
Waupun, WI 53963

Roger A. Hyndman  
3122 Antero Drive  
Loveland, CO 80593

Victoria Jones  
1204 Pennsylvania Avenue  
Steubenville, OH 43952

Pat Kelley and Gayle Niles  
P.O. Box 10  
Frederick, CO 80530

Holly Key  
435 George Wallace Drive  
Gadsden, AL 35903

Linda Maccaux  
1100 Draper Street #5  
Baraboo, WI 53913

Doris L. Mines  
8837 Auburn Drive  
N. Charleston, SC 29406

Beverley T. Polin  
134 Oakside Drive  
Lot 48  
Goose Creek, SC 29445  
Lynn Zimmerman  
N5872 Malick Circle  
Beaver Dam, WI 53916

Patsy White  
710 East 7<sup>th</sup> Street  
Hope, AR 71801

Robin Lore  
211 South 8<sup>th</sup> Street  
Terre Haute, IN 47802

George Justus  
438 South 21<sup>st</sup> Street  
Terre Haute, IN 47803

Lori Williams  
3533 SR327  
Corunna, IN 46730

Bonnie Bolton  
127 A East Ridge  
Nanticoke, PA 18634

Laura Cooks  
42100 El Camino Real  
Greenfield, CA 939217

Dane E. Ericksen, P.E.  
Co-Chair  
EIBASS  
18755 Park Tree Lane  
Sonoma, CA 94128